

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lesley Henry	Team: Team # 3	CCRB Case #: 201214142	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 08/18/2012 7:30 PM	Location of Incident: Hancock Street between Marcus Garvey Boulevard and Lewis Avenue	Precinct: 81	18 Mo. SOL 2/18/2014	EO SOL 2/18/2014	
Date/Time CV Reported Mon, 12/03/2012 5:36 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 12/03/2012 5:36 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Joseph Cruzado	04330	934706	079 PCT
2. DT3 Matthew Zito	04038	937792	NARCBBN
3. An officer			Unknown
4. Officers			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Pamela Benites	13086	946728	079 PCT
2. DT3 Matthew Massa	02058	937039	NARCBBN
3. POM Joseph Ramistella	04068	949526	079 PCT
4. SGT Michael Weber	04578	929343	NARCBBN
5. POM Andy Scantlebury	03699	937500	079 PCT
6. POM Raymond Williams	22154	947610	079 PCT
7. DT3 Erik Hirsch	03907	930356	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Matthew Zito	Force: Det. Matthew Zito used pepper spray against § 87(2)(b)	
B.DT3 Matthew Zito	Force: Det. Matthew Zito used pepper spray against individuals.	
C.SGT Joseph Cruzado	Discourtesy: Sgt. Joseph Cruzado spoke rudely to § 87(2)(b)	
D.SGT Joseph Cruzado	Force: Sgt. Joseph Cruzado used physical force against § 87(2)(b)	
E. Officers	Force: Officers used physical force against § 87(2)(b)	
F. Officers	Force: Officers struck § 87(2)(b) with an asp.	
G. An officer	Force: An officer used physical force against § 87(2)(b)	

### Case Summary

On December 3, 2012, § 87(2)(b) filed a complaint with the CCRB via the online web site (encl. 5A-D).

On August 18, 2012, Det. Matthew Zito of Narcotics Borough Brooklyn North and Sgt. Joseph Cruzado of the 79<sup>th</sup> Precinct were involved in an incident on Hancock Street between Marcus Garvey Boulevard and Lewis Avenue in Brooklyn with § 87(2)(b) his father § 87(2)(b) and § 87(2)(b). The following allegations resulted:

- **Allegation A – Force: Det. Matthew Zito used pepper spray against § 87(2)(b)**  
§ 87(2)(g)
- **Allegation B – Force: Det. Matthew Zito used pepper spray against individuals.** § 87(2)(g)
- **Allegation C – Discourtesy: Sgt. Joseph Cruzado spoke rudely to § 87(2)(b)**  
§ 87(2)(g)
- **Allegation D – Force: Sgt. Joseph Cruzado used physical force against § 87(2)(b)**  
§ 87(2)(g)
- **Allegation E – Force: Officers used physical force against § 87(2)(b)**  
§ 87(2)(g)
- **Allegation F – Force: Officers struck § 87(2)(b) with an asp.**  
§ 87(2)(g)
- **Allegation G – Force: An officer used physical force against § 87(2)(b)** § 87(2)(g)

§ 87(2)(b) filed his complaint nearly four months after the incident date when he learned about the CCRB from his civil suit attorney.

### Results of Investigation

#### Civilian Statement(s)

##### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *old at the time of the incident, is a black and Hispanic man, 5'8" tall, 140 lbs., with black hair and brown eyes. At the time of his CCRB interview,* § 87(2)(b)

##### Civilian Photograph/Arrest Photograph

On February 25, 2013, § 87(2)(b) emailed a picture taken with his cell phone on the date of the incident that depicts multiple abrasions to his forehead and the left side of his face (encl. 9).

§ 87(2)(b)'s arrest photograph depicts minor abrasions to his forehead and the left side of his left eyebrow. § 87(2)(b) stated that the photographs he provided were enhanced with a photo editing program (encl. 11).

### **CCRB Testimony**

On February 25, 2013, § 87(2)(b) was interviewed by the CCRB (encl. 10).

On August 18, 2012, around 3 p.m., § 87(2)(b) had been at a block party on Hancock Street between Marcus Garvey Boulevard and Lewis Avenue in Brooklyn with his friends for at least three hours. § 87(2)(b) and § 87(2)(b) whose last name in unknown, consumed some food and alcohol, and smoked four marijuana joints. § 87(2)(b) did not feel the effects of the alcohol, but felt mildly relaxed due to the marijuana and other than that he was fine.

At 7:30 p.m., § 87(2)(b) was arrested by plainclothes officers. Approximately 100 civilians followed § 87(2)(b) to an unmarked police van. The officers told the crowd to get back multiple times, but no one listened. An officer, identified through investigation as Det. Matthew Zito, and described as a white man, 5'9" tall, 180-250 lbs., in uniform, fumbled with the keys and could not open the van doors. Det. Zito explained why § 87(2)(b) had been arrested, but they did not listen. Det. Zito waved a pepper spray can from left to right, and then pepper sprayed § 87(2)(b). The pepper spray was white/grayish in color and had a watery consistency. § 87(2)(b) screamed out in pain and fell into the van. § 87(2)(b) assumed that a different officer had opened the van doors in the interim). § 87(2)(b)'s sister, whose name § 87(2)(b) did not know, stepped toward Det. Zito and he told her to get back twice, but she did not. Det. Zito pepper sprayed her in her eyes. § 87(2)(b) had heard an elderly woman had also been pepper sprayed, but he did not see when that had occurred.

§ 87(2)(b) walked toward Marcus Garvey Boulevard leaving the chaos. An officer, identified through investigation as Sgt. Joseph Cruzado, and described as a white man, 6'1" tall, 220 lbs., with short hair, and in uniform, told § 87(2)(b) "Get the fuck outta here." § 87(2)(b) crossed the street and Sgt. Cruzado followed him and pushed his body against § 87(2)(b)'s back. § 87(2)(b) tripped forward, but continued walking and said, "I live right there." Sgt. Cruzado said, "Get the fuck away from my officers." § 87(2)(b) was not too near or engaged with officers in any way. Sgt. Cruzado pushed § 87(2)(b) a second time causing him to fall to the ground hitting the front of his body and face. § 87(2)(b) sustained lacerations and abrasions to the front and left side of his forehead. Approximately four to five officers approached and punched him in the back of the head multiple times, kicked him in his ribs twice and hit him with an asp in his lower back four times. § 87(2)(b) kept his face toward the ground and held his arms underneath his body; he denied assaulting the officers. He heard, "Give me your hands," twice and within 20 seconds § 87(2)(b) was handcuffed.

Two officers, whom § 87(2)(b) could not describe, escorted him to a marked patrol car. § 87(2)(b) did not offer any resistance and the officers slammed his chest and face against the trunk of the patrol car unnecessarily. § 87(2)(b) was not injured. The officers asked whether § 87(2)(b) had any contraband and he informed that he had marijuana in his pocket. § 87(2)(b) Botlon's father, § 87(2)(b) appeared and an officer said that § 87(2)(b) had cursed at them, which he denied. An officer, whom § 87(2)(b) described as a white man, 6'1" tall, with a thick build and in uniform, kned

§ 87(2)(b) in the stomach and put him in a patrol car. § 87(2)(b) stepped forward and an officer, determined to be Sgt. Cruzado, pushed him away. An officer, described as a black man, with a dark complexion and uniformed, opened the patrol car door and punched § 87(2)(b) in the forehead twice. § 87(2)(b) sustained bruising to his forehead; he did not recall left, right or center. § 87(2)(b) did not believe he would be able to identify any of the officers involved in a photographic array because of the amount of time that had elapsed and because he did not look into their faces. § 87(2)(b) was taken to the 79<sup>th</sup> Precinct stationhouse.

**Victim:** § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *old on the date of the incident, is a black man, 5'7" tall, 140 lbs., with salt and pepper hair and brown eyes. At the time of his CCRB interview, § 87(2)(b)*

**CCRB Testimony**

On August 18, 2012, at 7:30 p.m., § 87(2)(b) observed from his third story window approximately 20 uniformed police officers run past his building. § 87(2)(b) exited his building and his landlord told him that his son, § 87(2)(b) was on the corner where all the police had gathered. At approximately 20 feet away, § 87(2)(b) saw approximately four officers chase and knock a man down. § 87(2)(b) later learned that the man was § 87(2)(b) § 87(2)(b) could not explain exactly how § 87(2)(b) was knocked down due to his distance and cluttered line of sight.

Sgt. Cruzado who was described as having a light complexion and in uniform, hit § 87(2)(b) but he was not hit by any other officers. § 87(2)(b) was lifted onto his feet and § 87(2)(b) saw that it was his son. § 87(2)(b) told the officers that § 87(2)(b) was his son and he was allowed to approach him.

An unidentified officer, described as a black man, 5'8" tall, 150 lbs., 30's, in uniform, was placing § 87(2)(b) into a patrol car, but had not yet done so. § 87(2)(b) did not see that officer punch § 87(2)(b) in the forehead. § 87(2)(b) asked what § 87(2)(b) was charged with and Sgt. Cruzado said that § 87(2)(b) had refused to leave when told to do so. § 87(2)(b) said that § 87(2)(b) lived there and had a right to remain there. Sgt. Cruzado pushed § 87(2)(b) in the chest and said that § 87(2)(b) did not have any rights. § 87(2)(b) stumbled backward, but was not injured. Sgt. Cruzado then knelt § 87(2)(b) in the stomach.

§ 87(2)(b) asked Sgt. Cruzado for his badge number and Sgt. Cruzado said, "Here's my name and shield number," and allowed § 87(2)(b) to record the name "Cruzado" and "shield 4340."

**Witness:** § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *old at the time of the incident, is a black man, 6'1" tall, 180 lbs., with black hair and brown eyes. At the time of his CCRB interview, § 87(2)(b)*  
§ 87(2)(b) was identified as a witness by § 87(2)(b) they are friends.

**CCRB Testimony**

On August 18, 2012, at 7:30 p.m., § 87(2)(b) observed four plainclothes officers arrest § 87(2)(b). A crowd of approximately 40 people, including § 87(2)(b), followed the officers and asked why § 87(2)(b) had been arrested. The officers placed § 87(2)(b) into an unmarked van and the crowd started to yell, so the officers called for backup. An officer identified through investigation as Det. Zito, and described as a white man in plainclothes, 5'6" tall, with a big belly, removed his pepper spray and sprayed from left to right at the crowd. An unidentified female, known to § 87(2)(b) only as "§ 87(2)(b)" was sprayed in the eyes. § 87(2)(b) walked away and then watched § 87(2)(b) walking away with "§ 87(2)(b)" who was crying and rubbing her eyes.

Approximately 40 uniformed officers ran towards the corner of Hancock Street and Lewis Avenue. Sgt. Cruzado, described as a uniformed white man, pushed § 87(2)(b) to the ground and grabbed his arms. Approximately 10 or more officers surrounded § 87(2)(b) like "ants on a piece of bread," and § 87(2)(b) was unable to see what he was doing. The officers punched and kicked at § 87(2)(b). § 87(2)(b) did not see any officer use an asp against him. § 87(2)(b) could not describe the officers, other than they were all males. After two minutes, § 87(2)(b) was lifted up and walked to a patrol car. An officer, described as a black man, opened the door of the patrol car and it appeared as if he wanted to hit § 87(2)(b) but no other officer punched § 87(2)(b) while he was in the patrol car.

#### **Attempts to Contact Civilians**

§ 87(2)(b) did not provide a last name or any contact information for his friend, Benjamin; therefore, the CCRB was unable to locate him as a witness. On March 5 and March 7, 2013, a telephone number located during a CTS search for § 87(2)(b) was called and on March 7, 2013, an unidentified male indicated that it was the wrong number. On March 5 and March 19, 2013, two letters were mailed to § 87(2)(b) at the address listed on his BADS report. The letters were not returned to the CCRB by the United States Postal Service. The BADS report did not provide a telephone number for § 87(2)(b). On March 7, 2013, a search of LexisNexis for a correct telephone number for § 87(2)(b) was returned with negative results. On March 19, 2013, a search of the New York City Department of Correction online inmate locator system revealed that § 87(2)(b) was not incarcerated.

#### **NYPD Statement(s):**

##### **Subject Officer: DET. MATTHEW ZITO**

- *Det. Matthew Zito, § 87(2)(b) old on the date of the incident, is a white man, 6'2" tall, 265 lbs., with brown hair and brown eyes. On August 18, 2012, Det. Zito worked in plainclothes assigned to the prisoner van with Det. Hirsch from 3:00 p.m. until 11:33 p.m.*

##### **Memo Book**

Det. Zito's memo book entries indicate that at 8:30 p.m., a positive buy was made at the incident location. At 8:40 p.m., one individual was arrested and a call for additional police assistance was requested. A crowd of approximately 30 people were angry and had been drinking alcohol. An unknown male and female, approximately 30 to 40 years old, were pepper sprayed (encl. 14A-E).

##### **CCRB Testimony**

On August 14, 2013, Det. Matthew Zito was interviewed by the CCRB (encl. 15A-B).

On August 18, 2012, at approximately 8:30 p.m., Det. Massa arrested § 87(2)(b) and Det. Zito and Det. Hirsch were called to bring the prisoner van to the corner of Hancock Street and Lewis Avenue in Brooklyn. A crowd surrounded the prisoner van and Det. Zito requested additional police assistance. Det. Zito then exited the van to open the rear doors.

Det. Zito placed § 87(2)(b) into the van; he was not pepper sprayed. An unidentified man and woman charged toward the van and tried to pull § 87(2)(b) out. Det. Zito told them multiple times, “Get back,” and he outstretched his arms to keep them away. The man and woman stepped back approximately three feet and then charged forward again saying, “Let him go.” Det. Zito discharged pepper spray from left to right for approximately one minute in their direction because they had prevented Det. Zito from securing § 87(2)(b) in the prisoner van. Det. Zito did not spray into the crowd and he did not notice whether anyone else had been affected.

The unidentified man and woman retreated into the crowd and Det. Zito did not follow them because he was greatly outnumbered. Back up officers responded and Det. Zito took § 87(2)(b) to another location where the undercover officer identified him as the suspect.

Det. Zito later returned to Hancock Street and canvassed for the unidentified man and woman, but he did not locate them. Det. Zito did not recognize § 87(2)(b) from his arrest photograph and he did not witness or participate in his arrest.

**Subject Officer: SGT. JOSEPH CRUZADO**

- *Sgt. Joseph Cruzado, § 87(2)(b) old on the date of the incident, is a Hispanic man, 5'8" tall, 200 lbs., with black hair and brown eyes. On August 18, 2012, Sgt. Cruzado worked in uniform from 2:50 p.m. until 11:47 p.m. assigned as the patrol supervisor with PO Joseph Ramistella in a marked vehicle.*

**Memo Book**

Sgt. Cruzado's memo book entries indicate that at 8:49 p.m., he responded to Hancock Street between Lewis Avenue and Marcus Garvey Boulevard due to a request for police assistance from Narcotics Borough Brooklyn North. The officers indicated that there was a large crowd at the location that grabbed a prisoner as he was put into a prisoner van. At 8:55 p.m., § 87(2)(b) was arrested for § 87(2)(b) (encl. 16A-B).

**CCRB Testimony**

On April 16, 2013, Sgt. Joseph Cruzado was interviewed by the CCRB (encl. 17A-B).

On August 18, 2012, at approximately 8:49 p.m., Sgt. Cruzado and PO Ramistella arrived at Hancock Street and Marcus Garvey Boulevard in Brooklyn. There were approximately 12 vehicles blocking the street because of a block party and the officers exited their vehicle and ran onto the block. There were numerous officers from the 79<sup>th</sup> Precinct, 81<sup>st</sup> Precinct and PSA 3 present. Sgt. Cruzado could not identify any officers from his command because he had only been assigned to the 79<sup>th</sup> Precinct for three days at that time.

From about a half block away, Sgt. Cruzado observed a prisoner van with four plainclothes officers on the corner of Hancock Street and Lewis Avenue and a crowd of approximately 15 civilians surrounding the van. Sgt. Cruzado did not see any prisoners grabbed or removed from the van; that information was provided over the radio transmission. Sgt. Cruzado could not hear

any statements between the plainclothes officers and the crowd. Sgt. Cruzado did not see any officer pepper spray anyone and he did not see any civilians affected by pepper spray. Sgt. Cruzado encountered another crowd of approximately 15 civilians in the middle of the block. Sgt. Cruzado told the crowd to disperse three or more times and they walked in different directions. § 87(2)(b) remained standing in the street. Sgt. Cruzado told § 87(2)(b) directly to disperse or he would be arrested. He did not say, "Get the fuck outta here." § 87(2)(b) said, "No, do what you got to do," and stood in the street. Sgt. Cruzado grabbed § 87(2)(b)'s two arms from behind and told him he was under arrest. § 87(2)(b) struggled against Sgt. Cruzado holding him and they both fell to the ground. Sgt. Cruzado denied that he pushed § 87(2)(b) to the ground. Sgt. Cruzado did not know whether § 87(2)(b) had injured his face. Sgt. Cruzado was shown photographs of § 87(2)(b) depicting abrasions to the left side of his face. Sgt. Cruzado could not determine whether they were abrasions or birth marks. § 87(2)(b) held his arms underneath his body and refused to be handcuffed. Sgt. Cruzado grabbed § 87(2)(b)'s arms and handcuffed him within 15 seconds unassisted. Sgt. Cruzado had instructed PO Ramistella to assist the plainclothes officers at the corner. Sgt. Cruzado did not punch, kick or hit § 87(2)(b) with an asp and he did not see any other officer do so.

Sgt. Cruzado lifted § 87(2)(b) from the ground and walked him toward a marked patrol car. § 87(2)(b) refused to enter the patrol car. Sgt. Cruzado pushed on § 87(2)(b)'s mid-section and pushed him into the car with his hands. Sgt. Cruzado denied that he kned § 87(2)(b) in the stomach. Sgt. Cruzado denied that any officer punched § 87(2)(b) in the face after he was placed in the patrol car. § 87(2)(b)'s father, § 87(2)(b) approached after § 87(2)(b) was inside of the patrol car. § 87(2)(b) threatened to have Sgt. Cruzado's job taken away because he knew a judge. He also said, "I'm going to fuck you up." Sgt. Cruzado told multiple people, including § 87(2)(b) to step back. Sgt. Cruzado denied that he pushed § 87(2)(b) and he did not see any other officer do so. Sgt. Cruzado told § 87(2)(b) that he would speak with him at the 79<sup>th</sup> Precinct stationhouse.

§ 87(2)(b) did not complain of any injuries to Sgt. Cruzado and he did not request medical attention. Sgt. Cruzado assigned the arrest to PO Pamela Benites of the 79<sup>th</sup> Precinct and assisted in clearing the street by telling the other people to disperse.

#### **Witness Officer: DET. MATTHEW MASSA**

- *Det. Matthew Massa, § 87(2)(b) old on the date of the incident, is a white man, 6'1" tall, 180 lbs., with brown hair and blue eyes. On August 18, 2012, Det. Massa was assigned to the detective squad with Sgt. Michael Weber in plainclothes and assigned to an unmarked vehicle from 3:00 p.m. until 11:33 p.m.*

#### **Memo Book**

Det. Massa's memo book entries indicate that at 8:30 p.m., there was a positive buy during a buy and bust operation at Hancock Street and Lewis Avenue. At 8:40 p.m., § 87(2)(b) was arrested for § 87(2)(b) (encl. 18A-C).

#### **Arrest Report**

The arrest report prepared for § 87(2)(b) indicates that on August 18, 2012, at 8:40 p.m., § 87(2)(b) exchanged a controlled substance with an undercover, was arrested without the use of

force on Hancock Street and charged with § 87(2)(b), § 87(2)(a) 160.50 (encl. 19A-B).

### **CCRB Testimony**

On August 14, 2013, Det. Matthew Massa was interviewed by the CCRB (encl. 20A-B).

On August 18, 2012, at approximately 8:30 p.m., § 87(2)(b) was arrested during a buy and bust operation by officers from Narcotics Borough Brooklyn North on Hancock Street between Marcus Garvey Boulevard and Lewis Avenue during a block party. Det. Galati and Det. Vanzanten escorted § 87(2)(b) to the prisoner van on the corner of Hancock Street and Lewis Avenue. Det. Massa attempted to keep a crowd of people from following the officers, but he was unsuccessful. Det. Massa did not pepper spray anyone and he did not participate in or observe any other arrests.

### **Witness Officers: SGT. MICHAEL WEBER, DET. ERIK HIRSCH, PO JOSEPH RAMISTELLA, PO ANDY SCANTLEBURY and PO RAYMOND WILLIAMS**

- *Sgt. Michael Weber, § 87(2)(b) old on the date of the incident, is a white man, 5'7" tall, 185 lbs., with brown hair and brown eyes. On August 18, 2013, Sgt. Weber worked in plainclothes from 3:30 p.m. until 12:05 a.m. the following day, assigned as the Narcotics Supervisor with Det. Matthew Massa in an unmarked car.*
- *Det. Erik Hirsch, § 87(2)(b) old on the date of the incident, is a white man, 6'2" tall, 205 lbs., with brown hair and brown eyes. On August 18, 2012, Det. Hirsch worked in plainclothes from 3 p.m. until 11:33 p.m. with Det. Zito assigned to the prisoner van.*
- *PO Ramistella, § 87(2)(b) old on the date of the incident, is a white man, 5'11" tall, 230 lbs., with brown hair and green eyes. On August 18, 2012, PO Ramistella worked in uniform from 3 p.m. until 11:35 p.m. with Sgt. Cruzado assigned as Sergeant's Operator in a marked car.*
- *PO Andy Scantlebury, § 87(2)(b) old at the time of the incident, is black man, 6'2" tall, 220 lbs., with a shaven bald head and brown eyes. On August 18, 2012, PO Scantlebury worked in uniform from 5:30 p.m. until 2:05 a.m. the following day with PO Pamela Benites and PO Raymond Williams assigned to Conditions in a marked van.*
- *PO Raymond Williams, § 87(2)(b) old on the date of the incident, is a white man, 6' tall, 195 lbs., with brown hair and blue eyes. On August 18, 2012, PO Williams worked in uniform from 3 p.m. until 2:05 a.m. the following day with PO Scantlebury and PO Benites assigned to Conditions in a marked car.*

### **CCRB Testimony**

Sgt. Weber, Det. Hirsh, and Officers Ramistella, Scantlebury and Williams did not recall any details of this incident as they related to the allegations.

### **NYPD Document(s)**

#### **SPRINT**

A request for a related SPRINT report was returned with negative results (encl. 37A).

### **Command Log**

A request for the 79<sup>th</sup> Precinct command log dated August 18, 2012 was returned with negative results as it was removed from the command for an SBA lawsuit (encl. 37C).

### **Arrest Report**



§ 87(2)(b) s arresting officer is listed as PO Pamela Benites. PO Benites prepared his arrest report; however, she was not present during the incident and was not interviewed.

§ 87(2)(b) s arrest report indicates that § 87(2)(b) refused to comply with Sgt. Cruzado's lawful order to disperse and not block pedestrian traffic. § 87(2)(b) crossed his arms face down and refused to be handcuffs. A search incident to lawful arrest produced marijuana (encl. 31A-C).

#### **Narcotics Borough Brooklyn North Tactical Plan**

The tactical plan dated August 18, 2012 indicates that Detectives Zito and Hirsch were assigned to the prisoner van. Sgt. Weber was assigned as the team leader and partnered with Det. Massa in the leader car (encl. 32).

#### **79<sup>th</sup> Precinct Roll Call**

The roll call dated August 18, 2012, tour 3, indicates that Sgt. Cruzado was the patrol supervisor assigned to vehicle 3225 (encl. 33).

#### **Summons/Arrest for Incident and Disposition**

- § 87(2)(b), § 87(2)(c)

#### **Status of Civil Proceedings**

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming he was falsely arrested, assaulted, battered and subjected to malicious prosecution and he is seeking damages in a reasonable amount to compensate for his injuries as redress (encl. [x]).

#### **Civilian(s) Criminal History**

- § 87(2)(b), § 87(2)(c)

#### **Civilian(s) CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3A).

#### **Subject Officer(s) CCRB History**

- Det. Matthew Zito has been a member of the service for 8 years and there are six substantiated CCRB allegations against him (encl. 2A-B):
  - In case 201001754, a vehicle stop, vehicle search and frisk were substantiated against Det. Zito and he forfeited 10 vacation days.
  - In case 201013036, a vehicle stop, vehicle search and frisk were substantiated against Det. Zito and he forfeited 10 vacation days.
- Sgt. Cruzado has been a member of the service for 9 years and there is one substantiated CCRB allegations against him (encl. 2C-E):
  - In case 200504637, a refusal to process a civilian complaint allegation was substantiated against Sgt. Cruzado and he received instructions.

#### **Conclusion**

#### **Identification of Subject Officer(s)**

Det. Zito acknowledged his actions during the incident in such a way that **Allegations A and B** were pleaded against him. Sgt. Cruzado acknowledged his interaction with § 87(2)(b) in such a way that **Allegations C and D** were pleaded against him.

### **Investigative Findings and Recommendations**

#### **Allegation A – Force: Det. Matthew Zito used pepper spray against § 87(2)(b)**

It remains in dispute whether Det. Zito pepper sprayed § 87(2)(b) § 87(2)(b) alleged that § 87(2)(b) was pepper sprayed and as a result he fell into the van; however, the investigation was unable to contact § 87(2)(b) to determine what occurred. § 87(2)(b) did not indicate that he observed § 87(2)(b) be pepper sprayed. Det. Zito acknowledged that he pepper sprayed a man and a woman, but he denied that he pepper sprayed § 87(2)(b). Det. Zito described § 87(2)(b) as compliant throughout the encounter and indicated that he tried to assist in calming down the crowd around the prisoner van. § 87(2)(b)'s arrest report does not indicate that force was used against him and there is also no notation that he had been pepper sprayed.

§ 87(2)(g)

#### **Allegation B – Force: Det. Matthew Zito used pepper spray against individuals.**

§ 87(2)(b) alleged that Det. Zito pepper sprayed the large crowd at the prisoner van and as a result, an individual named “Pierra” was affected. § 87(2)(b) indicated that § 87(2)(b) was sprayed directly in the eyes. It is undisputed that Det. Zito pepper sprayed at least two unidentified individuals while near the prisoner van and only after they failed to comply with his instructions to step back. The investigation was unable to identify or reach “§ 87(2)(b) or § 87(2)(b) to obtain their statements. Det. Zito alleged that a man and woman tried to remove § 87(2)(b) from the prisoner van and he acknowledged that he pepper sprayed them both for approximately one minute spraying from left to right in their direction. Sgt. Cruzado noted in his memo book that a prisoner had been grabbed while in the prisoner van. Det. Zito did not aim the pepper spray at the crowd and he did not know whether anyone else in the crowd had been affected. § 87(2)(g)

NYPD Patrol Guide Procedure 212-95 indicates that pepper spray may be used when a member reasonably believes it is necessary to effect an arrest. The procedure notes that officers should avoid using pepper spray indiscriminately over a large area for crowd control (encl. 1A-B).

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Discourtesy: Sgt. Joseph Cruzado spoke rudely to § 87(2)(b)**

§ 87(2)(b) alleged that he had been walking away when Sgt. Cruzado told him, “Get the fuck outta here” and “Get the fuck away from my officers.” Sgt. Cruzado said he told § 87(2)(b) and others to disperse and did not use profanity; it is undisputed that there was a large crowd at the location.

Depending on the circumstances, profanity is permissible where an officer has resorted to such language in order to forcefully make a point, to gain compliance with an order or direction or in the heat of a highly dangerous situation. Police Department v. Matias and Bitchatchi, OATH Index No. 1996 & 1997 (2000) (encl. 1C-I).

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Force: Sgt. Joseph Cruzado used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that he was pushed to the ground unprovoked by Sgt. Cruzado as he walked away from the corner of Hancock Street and Lewis Avenue. Sgt. Cruzado alleged that § 87(2)(b) refused to move and said, “Do what you gotta do.” Sgt. Cruzado denied that he pushed § 87(2)(b) to the ground and explained that during the struggle to handcuff § 87(2)(b) § 87(2)(b) fell to the ground. § 87(2)(b) statement was consistent with § 87(2)(b) in that § 87(2)(b) was pushed to the ground. While, § 87(2)(b) saw § 87(2)(b) on the ground, he did not know how that had occurred.

§ 87(2)(g)

**Allegation E – Force: Officers used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that he was punched and kicked in the head and body, and hit with an asp by officers whom he did not see. § 87(2)(b) stated officers punched and kicked § 87(2)(b) but he did not see them hit him with an asp. § 87(2)(b) observed only one officer hit § 87(2)(b). He did not see multiple officers hit him or see any officer use an asp. The officers interviewed denied that they used or observed any physical force be used against § 87(2)(b). Sgt. Cruzado stated that he handcuffed § 87(2)(b) unassisted and that no other officers used any physical force against § 87(2)(b). § 87(2)(b) did not seek medical treatment following the incident, but he provided photographs. The photographs provided by § 87(2)(b) depict abrasions on his face that

were by § 87(2)(b) s own admission, enhanced with an editing program. § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

NYPD Patrol Guide Procedure 203-11 (encl. 1J) states that only the amount of force necessary to overcome resistance will be used to effectuate an arrest.

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation F – Force: Officers struck § 87(2)(b) with an asp.**

**Allegation G – Force: An officer used physical force against § 87(2)(b)**

It remains in dispute whether officers struck § 87(2)(b) with an asp or whether an officer punched § 87(2)(b) in the face while he was seated in a patrol car. § 87(2)(b) alleged that he was struck with an asp because the blows felt harder than a punch or kick; however, he acknowledged that he did not look up at the officers or see an asp. § 87(2)(b) and § 87(2)(b) denied they observed any officer hit § 87(2)(b) with an asp and that information was consistent with the statement provided by Sgt. Cruzado.

§ 87(2)(b) stated he was punched by an officer whom he did not believe he would have been able to identify in a photographic array; however, § 87(2)(b) and § 87(2)(b) denied observing any officer punch § 87(2)(b) in the face at that time. Each of the officers interviewed denied that § 87(2)(b) had been hit with an asp or punched in the face.

§ 87(2)(b) did not sustain any serious injuries and he did not seek any medical attention.

§ 87(2)(b) acknowledged that he enhanced his photographs to make his injuries appear worse § 87(2)(g)  
[REDACTED]  
[REDACTED]

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date